

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

RALPH WHITTINGTON
160 Highway 7 South
Powhatan Point, Ohio 43942,

Plaintiff,

V.

PORTFOLIO RECOVERY
ASSOCIATES, LLC
c/o National Registered Agents, Inc.
145 Baker Street
Marion, Ohio 43302,

Defendant.

) Case No: 2:12-cv-701
)
) JURY DEMAND REQUESTED
)
) **CIVIL COMPLAINT**
) **(Unlawful Debt Collection Practices)**

COMPLAINT

PLAINTIFF RALPH WHITTINGTON, by his attorneys, KAHN AND ASSOCIATES, L.L.C., alleges the following against DEFENDANT PORTFOLIO RECOVERY ASSOCIATES, LLC:

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* (FDCPA).

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and *28 U.S.C. 1367* grants this court supplemental jurisdiction over the state claims contained therein.

3. Because Defendant conducts business in Ohio, personal jurisdiction is established.
4. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)*.

PARTIES

5. Plaintiff is a natural person who resides in, Belmont County, Ohio and is allegedly obligated to pay a debt, and Plaintiff is a "consumer" as that term is defined by *15 U.S.C. 1692a(3)*.
6. Pursuant to the definitions outlined in *15 U.S.C. 1692a(1-6)*, Defendant is a debt collector and sought to collect a consumer debt from Plaintiff which was allegedly due and owing from Plaintiff, and Plaintiff is a consumer debtor.
7. Defendant is a Delaware business entity and a debt collector with an office in Norfolk, Virginia.
8. Defendant uses instrumentalities of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is a "debt collector" as that term is defined by *15 U.S.C. § 1692a(6)*.
9. Defendant is a collection agency that in the ordinary course of business, regularly, on behalf of itself or others, engages in debt collection.

FACTUAL ALLEGATIONS

10. For approximately 20 months preceding January, 2012, Defendant, via its phone number of 800.772.1413, contacted Plaintiff at his phone number, 740.795.4118,

in an effort to collect an alleged consumer indebtedness for alleged nonpayment of an outstanding credit card balance.

11. Defendant during this period of time often called Plaintiff multiple times daily during certain weeks, and also called Plaintiff at inappropriate and unusual times of the day that were highly inconvenient, namely on Sundays, prior to 8 am EST and/or after 9 pm EST, and specifically a Defendant representative having the first name of Russell made at least one such call to Plaintiff at approximately 6 am during late December, 2011 or early January, 2012.

12. Defendant has continued to make such contacts with Plaintiff despite Plaintiff advising Defendant that he is presently limited to social security income and is incapable of making any payment on the alleged obligation, and also specifically requesting that Defendant proceed to court or other collection on the alleged debt as opposed to continuing to harass and annoy Plaintiff with further calls.

13. On information and belief, Defendant has further failed to advise Plaintiff during its contacts that the debt it sought to collect was time-barred as a matter of law and not viable for court legal proceedings, or that any partial repayment of the alleged debt could actually subject Plaintiff to litigation or other proceedings that otherwise could not legally be had, and/or potential obligation to repay all amounts allegedly owed.

COUNT I

DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

14. Defendant violated the FDCPA based on the following:

a. Defendant violated §1692c(a)(1) by, without the prior direct consent of

the consumer, communicating with the consumer at any unusual time or place or a time and place known to be inconvenient to the consumer, including before 8:00 AM and after 9:00 PM local time at the consumer's location.

- b. Defendant violated §1692d by engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.
- c. Defendant violated §1692d(5) by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- d. Defendant violated §1692e by using any false, deceptive, or misleading representation or means in connection with the collection of a debt.
- e. Defendant violated §1692e(2)(A) by the false representation of the character, amount, or legal status of a debt.

WHEREFORE, Plaintiff, RALPH WHITTINGTON, respectfully requests judgment be entered against Defendant, for the following:

- 15. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,
- 16. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k
- 17. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, RAPLPH WHITTINGTON, requests a jury trial in this case.

Respectfully submitted,

KAHN & ASSOCIATES, LLC

/s/ J. Daniel Scharville

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